

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JAMES ARTHUR STUART, JR.

Plaintiff,

v.

Case No. 09-C-507

MATTHEW J. RECH, III,

Defendant.

DECISION AND ORDER
GRANTING DEFENDANT'S MOTION TO DISMISS (DOC. # 6)
AND DISMISSING CASE

Plaintiff, James Arthur Stuart, Jr., filed this replevin action on May 20, 2009, seeking the return of property seized at 3765 Kettle Court East, Delafield, Wisconsin, on February 19, 2009, by defendant Matthew J. Rech, III. Stuart alleges that the property was taken "without a warrant supported by oath or affirmation" and that the property is detained wrongfully. This issue was decided by Magistrate Judge Aaron Goodstein in a separate action.

On February 27, 2009, Stuart filed a verified Motion for Return of Unreasonably Seized Property in Violation of the Fourth Amendment in the same proceeding which the search warrant was issued. *In the matter of the Search of: 3765 Kettle Court East, Delafield, Wisconsin*; Case No. 09-M-25 (E.D. Wis. 2009). In his motion, Stuart alleged that the property "was seized without a warrant on February 19, 2009, from the premises located at 3765 Kettle Court East, Delafield, Wisconsin," and sought its immediate return. Judge Goodstein construed the motion as a request under Rule 41(g)

and denied the same May 29, 2009. Judge Goodstein denied Stuart's request to transfer the case to a district judge and that case has not otherwise been assigned to a district judge. This court agrees with defendant and finds that the proper party defendant is the United States. Moreover, the pending action is the equivalent of the Rule 41(g) motion decided by Magistrate Judge Goodstein. Now, therefore,

IT IS ORDERED that defendant's motion to dismiss (Doc. # 6) is granted.

Dated at Milwaukee, Wisconsin, this 29th day of October, 2009.

BY THE COURT

/s/ C. N. Clevert, Jr.

C. N. CLEVERT, JR.

CHIEF U. S. DISTRICT JUDGE